

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF IDAHO

IN RE)	
)	Case No. 99-01288
FAIRVIEW MEDICAL CLINIC,)	
)	MEMORANDUM OF DECISION
Debtor.)	
_____)	

D. Blair Clark, RINGERT, CLARK, CHTD. Boise, Idaho, for Debtor.

Jeffrey Howe, Office of the U.S. Trustee's Office, Boise, Idaho.

Background.

This is a Chapter 11 case in which the Debtor's reorganization plan was confirmed by the Court on March 9, 2000. On March 10, Ringert, Clark, Chartered ("Applicant") filed its Request for Final Compensation by Attorneys for Debtor ("Final Application"). Notice of the Final Application was given to all interested parties. No objections to the Final Application were made. A hearing was scheduled by the Court to review the Final Application to take place on April 11, and then was continued to April 26. Applicant was invited to submit evidence and testimony in support of the Final Application at the second hearing. Instead, Applicant elected to rely upon the written record in this case, the information contained in the Final Application and in two affidavits authored by Mr. Clark, the attorney who performed all the services in this case for Debtor, and transcripts of testimony adduced at other recent hearings before the Court concerning

the reasonableness of fee requests submitted by counsel to Chapter 13 debtors. The Court took the matter under advisement. This decision constitutes the Court's findings of fact and conclusions of law. Fed. R. Bankr. Proc. 7052.

Applicable Law.

As attorneys for the Debtor, Applicant is entitled to "reasonable compensation for actual, necessary services rendered . . . and reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1)(A), (B). "In determining the amount of reasonable compensation to be awarded, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors" 11 U.S.C. § 330(a)(3). The "court shall not allow compensation for . . . services that were not reasonably likely to benefit debtor's estate . . . or necessary to the administration of the estate." 11 U.S.C. § 330(a)(4)(A)(ii). In providing services to the bankruptcy estate, a professional must exercise reasonable billing judgment. *In re Puget Sound Plywood, Inc.*, 924 F.2d 955, 959 (9th Cir. 1990). The burden of establishing entitlement to compensation, and its reasonableness, is on the applicant. *In re Dale's Crane, Inc.*, 99.1 I.B.C.R. 8 (Bankr. D. Idaho 1999). The Court may award less than has been requested. 11 U.S.C. § 330(a)(2). Even in the absence of an objection, the Court has an independent

duty to review fees and costs requested by bankruptcy estate professionals. *In re Schwandt*, 95 I.B.C.R. 268, 269 (Bankr. D. Idaho 1995).

The Court may allow a professional compensation and reimbursement of expenses on an interim basis during the pendency and prior to the conclusion of the bankruptcy case. 11 U.S.C. § 331. Interim allowances may be adjusted, if appropriate, at the time the Court passes upon the professional's final application. *In re Stewart*, 157 B.R. 893, 895 (9th Cir. B.A.P. 1993).

Discussion.

Applicant's Rule 2016(b) disclosure, filed on May 19, 1999, reveals Applicant received a retainer of \$7,500 from Debtor prior to the commencement of the bankruptcy case. In November, 1999, Applicant requested, and in December, 1999, was granted an interim allowance of compensation in the sum of \$11,860.00 and reimbursement of expenses in the sum of \$20.00. Applicant's Final Application seeks an award of an additional \$3,828.00 in fees and \$585.00 in costs, and reveals the retainer has been applied in partial payment of the amounts allowed on an interim basis.

It appears the results obtained by Applicant for Debtor in this case were satisfactory in the sense that Debtor's proposed reorganization plan was confirmed. The case involved a closely-held Boise medical clinic, owned and operated by two local

physicians. The doctors contracted with a medical management company to sell their “practices,” and according to Debtor, that management company breached the purchase agreement shortly after the deal was closed. The management company then filed for Chapter 11 relief in Pennsylvania, and sued Debtor and the doctors. Debtor filed this Chapter 11 case to avoid the entanglements associated with the aborted sale transaction, and proposed to operate the clinic to generate the income to pay off its debts. The bankruptcy schedules list about \$1.2 million in assets, the bulk of the value of which was the clinic’s real property, and debts of about \$500,000, most of which represented outstanding claims of a local bank secured by the hard assets of the clinic.

According to the file and the time itemizations attached to the fee applications, the principal activities of Applicant in the Chapter 11 case, in addition to those normally associated with advising a Debtor in proposing and confirming a reorganization plan, consisted of defense of stay relief litigation. As it turns out, while certain significant issues between the parties have not been finally resolved, the parties agreed to the terms of a plan, and confirmation was obtained without objection.

Based upon the Court’s this review of the proceedings, the Court confidently concludes that Mr. Clark performed the bulk of services in a competent and satisfactory fashion. The Court would expect no less, since Mr. Clark is a seasoned bankruptcy attorney with considerable skills in representing a reorganizing Chapter 11

debtor. In spite of this, the Court has two concerns about the amounts requested for final fees in this case.

First, there are numerous entries in the fee application itemizations indicating, as near as the Court can decipher, that James G. Reid, another member of Applicant's firm, participated in several client and inter-office conferences during May through August, 1999.¹ Applicant evidently seeks compensation for these services, without explaining, however, the need or benefit for two senior members of the firm to be involved in these activities. Moreover, Mr. Reid's time is billed out at \$150 per hour, a rate in excess of that of even Mr. Clark, without any showing in the record that the rate is a reasonable one. Because the Court is unfamiliar with Mr. Reid's skills and abilities, especially in the context of a Chapter 11 case, the Court cannot presume the high rate requested is appropriate. A reduction from the final fees approved in this case of \$1,380 (9.2 hrs. @ \$150/hr.) is therefore appropriate.

The next issue involves the time devoted to the case by Mr. Clark. The Court finds from the evidence submitted in connection with this and other cases, and based upon the Court's experiences, that bankruptcy attorneys in this District generally charge from \$75 to \$150 per hour, depending upon the attorney, the facts and kind of bankruptcy

¹ Time entries are found for the following dates in 1999, all under the general category "case administration": 5/26, 1 hr.; 5/28, .7 hrs.; 6/3, 1.5 hrs.; 6/17, 1.5 hrs.; 7/16, 1 hr.; 7/20, 1 hr.; 8/2, .5 hrs.; 8/5, .5 hrs.; 8/9, .5 hrs.; 8/10, 1 hr. Total time: 9.2 hrs.

case, and the requisite services. Services for attorneys in non-bankruptcy matters are charged out at a similar range of rates. Many of the services required in this Chapter 11 case involved some degree of sophistication and complexity not present in, for example, a routine, consumer bankruptcy matter. Therefore, it is reasonable to believe that Mr. Clark should command a rate at the higher end of the range of rates based upon the market.

However, because some of the services provided by Mr. Clark to the Debtor in this case required his special skills is not to say all the services he provided should be compensated at the same high rates. The Court is confident that some services rendered in this case required only a basic knowledge of bankruptcy law and practice, and that an attorney with much more modest credentials than Mr. Clark could have provided those services, presumably at a much lower cost to the client. Moreover, the Court is aware of other skilled bankruptcy lawyers, even within Applicant's own firm, who while traditionally charging lower hourly rates, could have satisfactorily performed this work.

The Court has no desire to interfere in a client's decision as to which lawyer within a the legal community in general, or within a particular firm, represents the client. On the other hand, "billing judgment" requires no more be charged for services than reasonable under the circumstances. In this context, it must be remembered that the compensation to be paid to the Chapter 11 debtor's lawyer diminishes from the bankruptcy estate pool of funds otherwise available for distribution to creditors. It is therefore

understandable why the statutes charge the Court with giving special attention to the rights of those creditors in approving professional compensation in bankruptcy cases.

As a practical matter, bankruptcy lawyers in this District and others prefer to charge “across the board” hourly rates covering all services provided, whether complicated or mundane. So long as careful attention is given to the difference in value of the services in assigning the rate charged for all services, the Court has no particular concerns with that approach.² It is when a high “across the board” rate is selected, though, that the Court must scrutinize precisely what kind of services are involved. This task becomes ever more challenging when cryptic time descriptions are employed by the lawyer or firm, from which it is difficult to discern the basis for requiring only an experienced bankruptcy lawyer do the work.

Here, Applicant seeks compensation at \$145 per hour for Mr. Clark’s services “across the board.” While the record is silent, the Court will presume Debtor instructed Mr. Clark to personally perform all services in this case instead of asking other bankruptcy attorneys within his firm charging a lower rate to assist him. Unfortunately, in many cases the descriptions of services provided in the fee applications do not, however,

² For example, in an Idaho Chapter 11 case, the Court would usually feel comfortable in approving compensation at a rate of \$100 to \$125 per hour without an evidentiary showing the rate is a reasonable one.

show the Court enough to justify Mr. Clark's rates.³ For example, there is no showing why it required someone of Mr. Clark's special expertise to prepare and review the bankruptcy schedules, the same pleadings and forms used in any bankruptcy case; to draft and review correspondence to creditors' representatives; to confer with client representatives (and in many instances, other members of the firm); or to prepare routine pleadings (such as fee applications), the disclosure statement, or the form of plan; or to consult with the Clerk of the Court. On the other hand, and while it is less than clear from the scant information in the itemized time entries, perhaps Mr. Clark's special skills were justified to negotiate with major creditors concerning plan treatment; to defend the stay relief motions; and to fine-tune the plan. So what is the Court to do with Applicant's request for compensation under these circumstances?

The Court could review each time entry, and reach an independent judgment whether the services provided justify the rate charged or some lower rate, resolving all doubts, under the rule placing the burden of proof on the professional, against Applicant.

³ Applicant has gone to considerable lengths to inform the Court about the high overhead cost for items like the equipment and skilled personnel used in its operation. With those resources it is ironic that Applicant comes up short in the quality of its fee application. The Court reviews dozens of such applications each month. Compared to others, Applicant's format for itemized billings is difficult to interpret and the amount of information provided about the particular services provided is skimpy. In this age of computerized time-keeping and word processing programs, submission of a such a fee application is a curious approach to law office economics.

However, giving Applicant what the Court feels is the benefit of the doubt, the Court instead opts to simply reduce the overall rate charged by Applicant “across the board.”

The Court finds and concludes that all services for which compensation is requested in this case could be fairly charged out by Applicant at the rate of at least \$125 per hour.⁴ Giving modest consideration to the challenges posed in this case, and although not really borne out looking just at the information in the applications, the Court will apply a slightly higher “across the board” rate of \$130 per hour for all services provided. The total hours documented in the two fee applications in this case total 108.9 (82.5 hours in the application for the interim allowance and an additional 26.4 hours in the final application). This computation results in an approved fee of \$14,157. Applicant’s costs will be approved as requested.

Conclusion.

⁴ While this rate is higher than the mid-point in the range of rates customarily charged in the District, some recognition is given in this case to Applicant’s uncontested argument that rates in the Boise area should be higher than those charged elsewhere in the District. While a slightly higher rate may be appropriate in this particular case, the Court can not categorically accept Applicant’s position without proper proof of a cognizable, geographic difference in rates, something the lawyers elsewhere in the State may not be too anxious to support. In fact, the Court would remind Applicant that the bulk of reorganization cases in this District are agricultural Chapter 11s and 12s, and most farm debtors are represented by lawyers living outside the Treasure Valley.

By separate order, the Court will approve, on a final basis, compensation for Applicant in the total sum of \$14,157, and expenses of \$605.86 for payment pursuant to the terms of Debtor's confirmed plan.

DATED This _____ day of May, 2000.

JIM D. PAPPAS
CHIEF U.S. BANKRUPTCY JUDGE

CERTIFICATE OF MAILING

I, the undersigned, hereby certify that I mailed a true copy of the document to which this certificate is attached, to the following named person(s) at the following address(es), on the date shown below:

Jeff Howe, Esq.
Office of the U.S. Trustee
P. O. Box 110
Boise, Idaho 83701

D. Blair Clark, Esq.
P. O. Box 2773
Boise, Idaho 83701

CASE NO.: 99-01288

CAMERON S. BURKE, CLERK
U.S. BANKRUPTCY COURT

DATED:

By _____
Deputy Clerk